U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29547038

Date: FEB. 8, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, an equestrian athlete trainer and rider, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements for this classification by meeting at least three of the ten evidentiary criteria under 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility as an individual of extraordinary ability, a petitioner (or anyone on the petitioner's behalf) must establish that they:

- Have extraordinary ability in the sciences, arts, education, business, or athletics;
- Seek to enter the United States to continue work in their area of extraordinary ability; and that
- Their entry into the United States will prospectively substantially benefit the United States.

Extraordinary ability must be demonstrated by evidence of the individual's sustained national or international acclaim, as well as extensive documentation that their achievements have been recognized in the field. Section 203(b)(1) of the Act.

The implementing regulation further states that the term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." It also

sets forth a multi-part analysis. A petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If such evidence is unavailable, then they must alternatively provide evidence that meets at least three of the ten listed criteria, which call for evidence about other awards they may have received, published material about them in qualifying media, and their authorship of scholarly articles, among other types of evidence. 8 C.F.R. §§ 204.5(h)(2),(3). If a petitioner can show that one or more of the evidentiary criteria are not readily applicable to their occupation, then they may submit evidence that is comparable to the required evidence.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination, assessing whether the record shows that the individual possesses the acclaim and recognition required for this highly exclusive immigrant visa classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is an equestrian rider and trainer specializing in the sport of show jumping. He intends to continue to compete in show jumping events in the United States, as well as train young horses to compete in those events.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined that the Petitioner met only one of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to his participation as a judge of the work of others in his field. On appeal, the Petitioner continues to assert that he also meets the evidentiary criteria relating to receipt of prizes or awards received as an equestrian rider, published material about him in major trade publications, original contributions of major significance to his field, and a leading or critical role for organizations having a distinguished reputation in the field.[1]

After reviewing all the evidence in the record, we conclude that he does not meet the requisite three criteria, and thus does not meet the initial evidentiary requirements for the requested classification.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i)

The Director determined that the Petitioner did not submit sufficient evidence to satisfy this criterion. However, we disagree and withdraw the Director's conclusion on this criterion.

[1] While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety.

In order to fulfill this criterion, the Petitioner must demonstrate that he received prizes or awards that are nationally or internationally recognized for excellence in his field of endeavor. The Petitioner submitted evidence of numerous awards and show placements that he has received throughout his career, including photos of trophies, lists of competition results, information about horse show events in which he competed, media articles, letters of endorsement, and letters from the [redacted]. The Director dismissed lists showing the Petitioner's placement results and did not to give evidentiary weight to photos of trophies that do not depict the Petitioner's name. On appeal, the Petitioner reiterates that the letters from the [redacted] letters of endorsement, media articles, and competition records serve to verify his achievements.

While the trophies may not identify him by name, the competition results, letters of endorsement, and media articles corroborate his claims of receiving the awards corresponding to the trophies. Moreover, the placement results and awards' recognition are also corroborated by the letters of endorsement and media articles.

Therefore, the Petitioner has satisfied the requirements for the criterion at 8 C.F.R. § 204.5(h)(3)(i).

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii)

To determine whether the Petitioner has submitted evidence that meets the plain language of this criterion, we first determine whether the published material was related to the person and the person's specific work in the field for which classification is sought. The published material should be about the person, relating to the person's work in the field. *See Noroozi v. Napolitano*, 905 F.Supp.2d 535 (2012) (holding that articles about the Iranian Table Tennis Team which only briefly mentioned the person were not about him.); *see also Negro-Plumpe v. Okin*, 2008 WL 106997512 (D. Nevada 2008) (concluding that articles focusing on a character played by the person or the show he performed in were not about the person). Published material that includes only a brief citation or passing reference to the person's work is not "about" the person. Second, we determine whether the publication qualifies as a professional publication, major trade publication, or major media publication. In evaluating whether a submitted publication is a professional publication, major trade publication, or major media, relevant factors include the intended audience (for professional and major trade publications) and the relative circulation, readership, or viewership (for major trade publications and other major media).[2]

On appeal, the Petitioner asserts that he meets this criterion and highlights sections from articles in several publications, including the [redacted] As noted by the Director, some of the articles contain only competition results and brief descriptions of the events. While some of the articles briefly mention the Petitioner, we cannot conclude that it is "about" him within the meaning of the criterion. Moreover, a few of the articles, including the [redacted] article, did not list an author, and therefore did not meet the requirements of this criterion. Others noted that they were an "Edited Press Release," prepared by an

[2] *Id.*

organization with which the Petitioner was affiliated in order to promote the organization and its members. Such marketing materials are not generally considered to be published material about a petitioner.[3] Furthermore, while the Petitioner provided information about [redacted] including its *Media Kit 2022* in support of it being a major trade publication, we are not required to rely on the self-promotional material of the publisher and "we may require more than the publication's own say-so that it is 'major.'" *Cf. Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 185 (D.N.J. 2021) (citing *Braga v. Poulos*, No. CV 06-5105 SJO FMOX, 2007 WL 9229758, at *7 (C.D. Cal. July 6, 2007) *aff'd*, 317 F. App'x 680 (9th Cir. 2009) (concluding that we did not have to rely on a company's self-serving assertions on the cover of a magazine as to the magazine's status as major media)).

In addition, in response to the Director's request for evidence (RFE), the Petitioner provided additional articles, including an article from the [redacted] however, these articles were published after the filing date. A petitioner must establish eligibility at the time of filing a petition. 8 C.F.R. § 103.2(b)(l).

For the foregoing reasons, we conclude that the Petitioner has not established that he meets this criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v)

To satisfy this criterion, a petitioner must establish that not only have they made original contributions, but that those contributions have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. *See Visinscaia*, 4 F. Supp. 3d at 134-35.

In the decision, the Director acknowledged that the reference letters submitted by experts and others in the field showed that the Petitioner has been successful but concluded that the letters lacked specificity regarding the originality of his training methodology and its influence on the field of equestrian sports. The Director also noted the lack of documentary evidence in the record to substantiate the writer's statements.

On appeal, the Petitioner asserts that the reference letters include details concerning his training method and its originality, and that the Director erred by not giving the letters adequate consideration. The reference letters all indicate that the Petitioner's training method focuses on the horse's state of mind and that it is all about the well-being of the horses. For instance, the letter from [redacted] states that the Petitioner "ensures his horses are happy in their work and builds a strong relationship with his horses" and that his training method "is quite different from the typical training philosophy of using force and aggression to train a horse." Moreover, the letter from [redacted] states that the Petitioner "has developed routines and training exercises that are unique and successful to develop these young horses into successful grand prix champions." The letter further explains that show jumping horses in the United States are usually purchased in Europe as they are "ready to go" horses and, therefore, having the Petitioner in the Unites States is so important to the equestrian

[3] *Id.*

industry because it adds "a great priority to the industry's long-term success that the U.S. start to spend the many millions of dollars to buy a top horse here in the U.S. and not in Europe." However, the letters do not establish that he has created an original method of training that has contributed to the broader show jumping or equestrian community. Nor do they show that the results of his training have been so impactful that they have been of major significance to the field. Moreover, we observe that letters indicate that as a result of the Petitioner's training methods, three horses, [redacted] and [redacted], have found outstanding success in competitions. While this evidence shows that the Petitioner has contributed to the advancement of these horses under his tutelage, it does not establish that he has made a contribution of major significance to the overall field of equestrian sports or training.

The Petitioner also asserts on appeal that the Director should have considered his claim under 8 C.F.R. § 204.5(h)(4) because there is no tangible proof of his training method, and therefore, the reference letters analyzed above should be considered as comparable evidence. This argument was initially made in response to the Director's RFE, which states that "[g]enerally, an original contribution is research, techniques, inventions, or other intellectual property that the petitioner created and developed" and that "there is no documentary evidence such as published material, patents, copyright or trademark material to corroborate the contributions claimed." While those types of documents may be submitted to show the originality of a claimed contribution by some petitioners, they are not applicable to all fields or all individuals seeking classification as individuals of extraordinary ability as the Director's statement suggests. The plain language of the regulations does not specify or limit the type of evidence that may be submitted in support of this criterion. However, for that same reason, the comparable evidence provision is itself not readily applicable to this criterion. Further, claims that reference letters should be accepted as comparable evidence, as the Petitioner does here, are generally not persuasive. We have instead considered those reference letters under the plain language of this criterion, as described above.

For all of the reasons provided above, we agree with the Director's conclusion that the Petitioner has not established that he meets this criterion.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii)

In order to meet this criterion, the Petitioner must establish that he not only played a leading or critical role, but also that the organization or establishment for which he played that role is recognized as having a distinguished reputation. The plain language of the regulation requires the organizations or establishments to have a distinguished reputation, defined as "marked by eminence, distinction, or excellence or befitting an eminent person."[4]

On appeal, the Petitioner states that "[t]he nature of equestrianism dictates that an organization's success is based upon the success of its rider" and that "[e]quine organizations are only able to establish and build a reputation on the basis that they have superior results in competition." The Petitioner references his employer, [redacted], and asserts that the printouts about her successes in the equestrian sport establishes that the company has a distinguished

[4] *Id.*

reputation. However, we disagree. While the evidence shows that [redacted] has won many prestigious awards in the sport, the evidence does not demonstrate that the company itself has a distinguished reputation. Without more, the evidence is insufficient to establish that the company has a distinguished reputation as required by the regulation at 8 C.F.R. § 204.5(h)(3)(viii). Therefore, the Petitioner has not established that he meets this criterion.

B. Final Merits Determination

While the Petitioner has not submitted the required initial evidence of either a one-time achievement or evidence that meets at least three of the ten criteria, we will nonetheless conduct a final merits determination. In a final merits determination, we examine and weigh the totality of the evidence to determine whether the petitioner has sustained national or international acclaim and is one of the small percentage at the very top of the field of endeavor, and that their achievements have been recognized in the field through extensive documentation. Here, the Petitioner has not offered sufficient evidence that he meets that standard.

Extraordinary ability is an elite level of accomplishment whose recognition cannot be established through meeting at least three of the evidentiary criteria alone. The final merits determination is the ultimate statutory inquiry of whether the applicant has extraordinary ability as demonstrated by sustained national or international acclaim. *Amin v. Mayorkas*, 24 F.4th 383, at 395 (2022).

As noted above, the Petitioner intends to remain in the United States to continue competing in show jumping tournaments and events, while also continuing to train riders and horses. In general, competitive athletics and coaching are not in the same area of expertise, as they rely upon different sets of skills. *Lee v. Ziglar*, 237 F. Supp. 2d 914, 917-8 (N.D. Ill. 2002). However, we acknowledge that many extraordinary athletes have gone on to become extraordinary coaches. Therefore, where a petitioner has established recent national or international acclaim as an athlete and has sustained that acclaim as a coach, we may consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability. *See generally* 6 *USCIS Policy Manual* F.2(A)(2), www.uscis.gov/policy-manual.

As a show jumping competitor, the record does not show that he has sustained the same level of competition success in the equestrian sports competitions. For instance, the Petitioner's FEI page, submitted in response to the Director's RFE, shows that his worldwide ranking has dropped from [redacted] to [redacted] Moreover, although the Petitioner has submitted articles indicating that he has won first place at the [redacted] the record lacks evidence showing that these wins, individually or cumulatively, help to show sustained acclaim or place the Petitioner at or near the top of his field as a show jumping competitor.

Turning to the Petitioner's work as a trainer, we have considered the reference letters submitted by his colleagues and employers when determining the originality and significance of his training methods above. As we noted, this evidence was not sufficient to show that he has established an original method of training that has impacted or influenced the show jumping or equestrian sports field to the required extent. In addition, the record shows that the Petitioner has trained horses that have gone on to have success, including [redacted] While the record shows that his expertise is appreciated by his employer and former employers and has led to general

improvements in their horses show jumping performance and their businesses, it does not demonstrate that he has been recognized for his efforts as a trainer at the national or international level.

Considering the totality of the evidence and the Petitioner's arguments on appeal, we conclude that he has not established that he meets the elite standards to be classified as a show jumping competitor and trainer of extraordinary ability.

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) ; *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"); *see also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at * 1 (D.D.C. June 3, 2020) (citing *Kazarian*, 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")).

Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that he is one of the small percentage who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.